

LABOUR DEPARTMENT

The 25th February, 1987

No. 9/1/87-6 Lab./912—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act. No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workman and the Management of (i) Secretary, H.S.E.B., Chandigarh, (ii) Superintending Engineer, 'OP' H.S.E.B. Kurukshetra.

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER, LABOUR COURT,
AMBALA

Ref. No. 82 of 1985.

SHRI PRABHU RAM C/O SHRI RAJESHWAR
NATH, TIMBER MARKET, AMBALA CANTT.
AND THE MANAGEMENT OF THE SECRETARY,
H.S.E.B., CHANDIGARH (II) SUPERINTENDING
ENGINEER, 'OP' H.S.E.B.,
KURUKSHETRA.

Present:

Shri Rajeshwar Nath, for the workman.

Shri N. P. Singh, for the respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of its powers conferred,—vide clause (C) of sub-section (i) of section 10 of Industrial Disputes Act, 1947 referred dispute between Shri Prabhu Ram and the H.S.E.B., etc., to this Court. The terms of the reference are as under:—

"Whether termination of services of Shri Prabhu Ram is just and correct, if not to what relief is he entitled?"

Workman alleged that he joined service of respondent-management on 23rd July, 1970 as a T.Mate. On 2nd March, 1980 he proceeded on leave on medical ground and remained ill up to 21st May, 1985 when he was declared fit to join duty, he reported for duty to Xen., H.S.E.B. Shahabad and the S.D.O. concerned but he was not allowed to join duty by the above officers. He made representations to Superintending

Engineer, but of no avail. Later on he submitted demand notice on the basis of the same his dispute has been referred to this Court. He prayed for his reinstatement with continuity in service and with full back wages.

Respondent-management contested the dispute and contended that the reference is bad for non-joinder of necessary and proper parties. Workman abandoned the job of the respondent wilfully. He absented on 2nd March, 1980 and thereafter he appeared after a lapse of four years by that time his name has been struck off from the rolls on account of his long absence. It was prayed that there is no violation of section 25(F) of Industrial Disputes Act, 1947. So it was prayed that the claim of the workman be rejected.

Workman filed replication through which he controverted the allegations of the respondent-management and supported his claim.

On the pleadings of the parties the following issues were framed:

Issues:

1. Whether termination order in question regarding services of workman is illegal and unjustified; if so, its effect? OPM
2. Whether reference is bad for non-joinder of necessary and proper parties? OPM
3. Whether reference is bad for delay and laches? OPM
4. Whether reference is barred under section 82 of Electricity Act? OPM
5. Relief.

I have heard Authorised Representatives of the parties and have perused the oral and documentary evidence placed on the file. My issue-wise findings are as under:

Issue No. 1

The case of the workman as supported by him on oath is that he fell ill on 2nd March, 1980 and on 3rd March, 1980 he was admitted in a private nursing home where he was operated upon. He remained ill up till June, 1984. He

obtained his medical certificate Mark-A and also fitness certificate reported for duty but he was not allowed to join duty. On the other hand the respondent-management contended that the workman abandoned his job. He remained wilfully absent. This statement was made by MW-1 Shri Lachhman Dev and MW-2 Shri Girdhari Lal, UDC. They also stated that workman did not apply for leave regarding his absence.

In view of the above evidence I am of the considered opinion that workman stated on oath that he despatched his leave to MW-2. In cross-examination he stated that leave application can be traced out from the record of the Sub-Division Office but no efforts were made to trace out the leave application of the workman. On the other hand workman examined Dr. Smt. Sunitee Sharma as AW-1 and she stated on oath that Shri Prabhu Ram, workman, remained under her treatment from 1980 to 1984. She issued medical certificate, Exhibit M-1. There is nothing material in the cross-examination of Dr. Smt. Sunitee Sharma. When workman obtained fitness certificate from the Doctor. He requested his S.D.O. and XEN for joining duty but he was not allowed to do so. Thereafter; he submitted his representations through registered cover to S.D.O., Haryana State Electricity Board, Barara, Executive Engineer, H.S.E.B., Shahabad and S.E. Haryana State Electricity Board, Kurukshetra. Copy of the same is, Exhibit A-1. Exhibit A-2 is a letter from S.E. Operation Circle, H.S.E.B., Kurukshetra to XEN 'OP' Division, H.S.E.B., Shahabad, along with this letter. The representations of the workman was despatched to XEN Shahabad and a copy of this letter which is, Exhibit A-2 was endorsed to Shri Prabhu Ram, workman.

In Exhibit A-1 it has been specifically mentioned by Shri Prabhu Ram in its para No. 5 that he has been requesting to his superior officer from 1st June, 1984 to take him back on duty but his request was not exceeded. In these circumstances it is proved on the file that workman despatched leave application on medical ground. He remained ill continuously for four years. There was no wilful absence from duty on his part. MW-2 Doctor submitted this fact that Shri Prabhu Ram remained under her treatment from March 1980 to May, 1984 and immediately thereafter when he was discharged from Nursing Home, he reported for duty but was not joined by the respondent-management. It is in the

evidence of the respondent-management that no letter was ever written to the workman for calling him on duty, nor it was ever intimated to him that his services have been dispensed with on account of his wilful absence.

In view of my above discussion I reach at the conclusion that from 2nd March, 1980 up till 30th May, 1984, workman remained ill. On 1st June, 1984 he reported on duty but was not taken on duty by the respondent-management. There is no reason of his wilful absence from duty, so the respondent has to grant medical leave or leave of the kind due from 2nd March, 1980 to 31st May, 1984 and it has to pay back wages from 1st June, 1984 to this date up to the date of joining to the workman. So the workman is entitled to reinstatement with continuity in service and with full back wages from 1st June, 1984 on words the day on which he reported on duty but was not allowed to join by respondent. So this issue is decided, in favour of workman against the management.

ISSUE NO. 2:

Workman has joined H.S.E.B. through Secretary and other respondents, i.e., Executive Engineer, 'OP' H.S.E.B., Kurukshetra, so the reference is not at all bad for non-joinder of necessary and proper parties. This issue is also decided in favour of workman against the management.

ISSUE NO. 3:

There is no delay in filing the demand notice because workman remained ill from 2nd March, 1980 to 31st May, 1984. After recovery from illness he reported on duty but he was not allowed then he served a demand notice, so the demand notice is not at all barred on account of delay and laches. So this issue is also decided, in favour of, workman against the management.

ISSUE NO. 4:

The workman issued demand notice that fulfil the requirement of section 82 of Electricity Act so this issue is also decided in favour of, workman against the respondent-management.

ISSUE NO. 5:

For the foregoing reasons on the basis of my issue-wise findings, I order the reinstatement of the workman with continuity in service and with

full back wages from 1st June, 1984 onwards. He will be entitled to leave of the kind due during the period of his absence. I pass award regarding the controversy between the parties accordingly.

The 9th December, 1986.

V. P. CHAUDHARY,

Presiding Officer,

Labour Court, Ambala.

Endorsement No. 3351, dated the 15th December, 1986.

Forwarded (Four Copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of Industrial Disputes Act, 1947.

The 9th December, 1986.

V. P. CHAUDHARY,

Presiding Officer,

Labour Court, Ambala.

No. 9/1/87-6Lab./913.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala, in respect of the dispute between the workman and the management of (i) State Transport Commissioner, Haryana, Chandigarh, (ii) General Manager, Haryana Roadways, Kaithal.

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER,
LABOUR COURT, AMBALA

Reference No. 251 of 1985

SHRI RAM BHAI, S/O SHRI INDER RAJ,
VILLAGE AND P.O. KHERI SIMBALWALI,
TEHSIL KAITHAL, DISTRICT KURUKSHETRA
AND THE MANAGEMENT OF THE (I) STATE
TRANSPORT COMMISSIONER, HARYANA,
CHANDIGARH, (II) GENERAL MANAGER,
HARYANA ROADWAYS, KAITHAL

Present:

Shri Rajeshwar Nath, for the workman.

Shri A. R. Goyal, for the respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of its powers conferred,—vide clause (C) of sub-section (i) of section 10 of Industrial Disputes Act, 1947 referred dispute between Shri Ram Bhaj and General Manager, Haryana Roadways, Kaithal, etc., to this Court. The terms of the reference are as under :—

Whether termination of services of Shri Ram Bhaj, workman, is just and correct, if not, to what relief is he entitled ?

Workman through his demand notice, dated 18th January, 1985 alleged that he joined service of respondent-management on 15th December, 1983 as a Helper in the workshop. His services were terminated on 4th January, 1985 in violation of mandatory provisions of section 25(F) of Industrial Disputes Act, 1947. He prayed that when he was terminated one Om Parkash who was junior to him was retained in service and certain new workman have been recruited after his termination. He prayed for his reinstatement with continuity in service and with full back wages.

Respondent-management contested the dispute and contended that appointment of workman was for a fixed period. His services automatically came to an end. On the expiry of terms of his appointment in view of section 2(oo) (bb) of the Act and there is no retrenchment on the part of the management regarding services of the workman. So he is not entitled to the relief claimed for.

On the pleadings of the parties the following issues were framed:

ISSUES:

(1) Whether termination order, dated 4th January, 1985, regarding services of the workman is illegal, if so, its effect ? OPW

(2) Relief.

I have heard Authorised Representatives of the parties and have perused the oral and documentary evidence placed on the file, My issue-wise findings are as under :—

ISSUE NO. 1:

In support of this issue workman examined himself as AW-1. He stated that he joined services of respondent on 18th December, 1983. His services were terminated on 4th January, 1985 without issuing any notice and without making payment of wages, in lieu of, notice period and retrenchment compensation. He also stated that one Om Parkash was retained in service who was junior to him and even after his termination certain new person have been recruited. Shri Kesar Dass appeared for respondent-management he stated that first of all workman was taken in job by the respondent on 15th December, 1983,—vide Exhibit MW-1/1 and the last period of employment of the workman was from 1st January, 1985 to 4th January, 1985 and thereafter his further service period neither extended nor renewed. In cross-examination he stated that he did not know whether any Om Parkash is junior to workman Ram Bhaj. However he stated that certain new person have been recruited after not renewing the service contract of workman.

Shri Rajeshwar Nath, Authorised Representative argued that in this case there is a violation of section 25(F) so the termination of services of workman be declared illegal. He drawn my attention towards 1985 LAB IC 1733 titled H. D. Singh vs. Reserve Bank of India. In which it was observed that striking off the name of the workman from the rolls by the employers amounts to termination of service within the meaning of section 2-(00). The facts of that case were that Tikka Mazdoor in Reserve Bank of India used to assist examiner of coins and notes. One of the workers qualified matriculation examination while Tikka Majdoor used to be under matric. On this very ground services of H. B. Singh were terminated without following provisions section 25(F). In spite of the fact that Shri H. D. Singh had put in service more than 240 days. So it was observed that this was an termination of services of Shri H. D. Singh in view of section 2-(00). But in the case in hand the facts are entirely different. Shri Ram Bhaj was appointed on daily wages as a Casual Labourer. Initially from 1st December, 1983 to 31st December, 1983. On 31st December, 1983 his service contract expired. Thereafter from time to time his service contract was renewed and last order on the file is Exhibit MW-1/2,—vide which service period of Shri Ram Bhaj was renewed only from 1st January, 1985 to 4th January, 1985 and thereafter his services period was

never renewed or extended. Respondent management has relied upon the newly inserted amendment 2-(00) (bb) which reads that if the employment was for a specific and fixed period it will come to an end automatically on the last working day. Such an appointment which is for a fixed period does not come in the meaning of retrenchment as provided under section 2(00). However it comes under section 2-(00) (bb). This newly inserted enactment has not been discussed in the case of Shri H. D. Singh vs. Reserve Bank of India. In that case H. D. Singh was employed as a Tikka Majdoor. Qualification of Tikka Majdoor was under matric but Shri H. D. Singh did his matric. He had completed service of 240 days. So his service was terminated in violation of section 25(F). However in the present case there is no such thing in the case in the appointment of Shri Ram Bhaj Helper was for a fixed and specific period, so as soon as the terms of his service period expired, he became out of job automatically and there is no question of termination in this case. Had the services of Ram Bhaj would have been terminated in non-compliance of section 25(F) of Industrial Disputes Act, 1947. In those circumstances he would have been entitled to relief as Shri H. D. Singh, so in the present case there is no termination but it is an automatic expiry of terms of service period in view of section 2(00) (bb). So the workman has not relief in his favour. So this issue is decided, in favour of, management against the workman.

Issue No. 2

For the for going reasons on the basis of my issue-wise finding I hold that there is no termination of services of the workman. In fact it is an automatic expiry of term of service in view of section 2-(00) (bb) of the Industrial Disputes Act, 1947. So I pass award regarding the dispute between the parties accordingly.

V. P. CHAUDHARY,

Presiding Officer,

Labour Court, Ambala.

Dated 1st December, 1986

Endorsement No. 3331, dated 10th December, 1986.

Forwarded (Four Copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of Industrial Disputes Act, 1947.

V. P. CHAUDHARY,

Presiding Officer,

Labour Court, Ambala.